

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

AUG 20 2002

CT

Michael N. Milby, Clerk

IN RE ENRON CORPORATION	§	
SECURITIES LITIGATION	§	CIVIL ACTION NO. H-01-3624
_____	§	Consolidated
	§	
THIS DOCUMENT RELATES TO:	§	CLASS ACTION
All Cases Consolidated with Newby	§	
And The Regents of the University	§	
Of California	§	

**PREFERRED PURCHASER PLAINTIFFS' MOTION
FOR CLARIFICATION OF THIS COURT'S ORDER ENTERED AUGUST 7,
2002, AND FOR AN EXPEDITED TELEPHONIC HEARING (OR IN-PERSON
HEARING IF PREFERRED BY THIS COURT) ON SAID CLARIFICATION MOTION**

TO: The Honorable Melinda Harmon:

COME NOW Henry H. Steiner, Daniel Kaminer, Christine Benoit, Michael and Jennifer Cerrone, Harold Karnes, Henry H. Steiner, Trustee u/w/o Jakob Hirschberger, Etta K. Steiner, The Eshe Fund, Dr. Thomas Barnett, Esther Phillips Jackson, Michael G. Palmiero, James A. Van Burgh, and the Preferred Purchaser Plaintiffs (hereinafter collectively the Preferred Purchaser Plaintiffs) who, based upon this Court's February 15, 2002 and August 7, 2002 Orders; the Memorandum of Law in Support hereof, and all the prior proceedings herein, move this Court for an Order granting expedited consideration of this Motion for Clarification of this Court's Order dated August 7, 2002 and granting the relief on the merits sought herein.

1. On August 7, 2002, this Court entered its Order (Dkt. No. 983) which stated that:

Still remaining is the issue of those tort claims asserted under the Texas Securities Act by the Preferred Purchasers that fall outside of the Class Period as defined in the Consolidated Complaint and that Lead Plaintiff has objected to adding to the Consolidated Complaint. After fully reviewing the extended briefing, this Court is persuaded by Lead Plaintiff's Response to Wolf Haldenstein's Additional Memorandum (#963), for the reasons expressed therein, that Preferred Purchasers' 1996-97 Class Period claims should not be pursued in Newby by Lead Plaintiff. Thus, as suggested by Lead Plaintiff, the Court grants leave to counsel for Preferred Purchasers to pursue these claims once the discovery stay is lifted following resolution of the motions to dismiss. . . . (4) Counsel for Preferred Purchasers shall

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independently prosecute Preferred Purchasers' tort claims under the Texas Securities Act after resolution of the pending motions to dismiss.

2. That Order also anticipates that this Court might divide the class at the class certification stage to provide separate representation for Enron's preferred share purchasers.

3. The Preferred Purchaser Plaintiffs are the only plaintiffs to have filed an action exclusively on behalf of purchasers of Enron's preferred stock.

4. The Consolidated Complaint being prosecuted by lead plaintiff and lead counsel contains claims under the Texas Securities Act brought with respect to certain public offerings. The motions to dismiss the Consolidated Complaint are presently pending. The motions to dismiss address the Texas Securities Act claims, but not the claims of the preferred purchasers.

5. The Preferred Purchasers seek to assert claims under the Texas Securities Act concerning other offerings, will have their own counsel prosecute those claims, per this Court's Order (which lead counsel would prefer), but seek to have their TSA claims included in the Consolidated Complaint (which lead counsel opposed, although it is unclear if lead counsel would still oppose the inclusion of these claims in the Consolidated Complaint given this Court has now held the claims will be prosecuted by preferred purchaser counsel and not lead counsel).

6. The Court's August 7, 2002 Order states that the Preferred Purchaser TSA claims "should not be pursued in Newby by Lead Plaintiff" and that "the Courts grants leave to counsel for Preferred Purchasers to pursue these claims once the discovery stay is lifted following resolution of the motions to dismiss." But, the Order does not state in what forum these claims should be pursued.

7. It is likely that only if the Texas Securities Act claims asserted by the Preferred Purchasers are included in the Consolidated Complaint (even if not prosecuted by lead counsel) will the relation back doctrine apply to prevent dismissal of these claims upon statute of limitations grounds.

8. Alternatively, the Preferred Purchaser Plaintiffs believe that their rights will be substantially prejudiced if their Texas Securities Act claims are not included in the Consolidated Complaint (in the form of the Supplement filed with this Court, or otherwise) at this time (even if

they are prosecuted by the preferred purchasers' lawyers and not by lead counsel). For if omitted from the Consolidated Complaint, and thus not subject to protection under the relation back doctrine, it is highly likely that these claims will be dismissed upon statute of limitations grounds.

9. Adding the Preferred Purchaser TSA claims to the Consolidated Complaint by Supplement and prosecuted by the preferred purchasers' counsel (and not prosecuted by lead plaintiff and lead counsel), does not prejudice lead plaintiff and lead counsel in any way. In fact, the Consolidated Complaint already includes a claim under the Texas Securities Act, concerning a public offering which also occurred prior to the three year federal class period, and that claim is asserted not by the Regents who was appointed Lead Plaintiff by this Court but by additional plaintiffs unilaterally included by lead counsel in the Consolidated Complaint who have never been appointed by this Court as a lead plaintiff. The pending motions to dismiss address that TSA claim.

10. In other words, even if the Preferred Purchaser's TSA claims "should not be pursued in Newby by Lead Plaintiff," as held by this Court, they should be pursued in Newby by the Preferred Purchasers and their counsel. In that way, there will be no prejudice to either Lead Plaintiff or to the Preferred Purchaser Plaintiffs.

11. Because of the immediacy of these issues, and the importance of not prejudicing the preferred purchasers' claims based upon purported statute of limitations defenses, an expedited telephonic hearing before this Court (or in-person hearing if preferred by this Court) is essential.

WHEREFORE, The Preferred Purchaser Plaintiffs request that:

(a) this Court issue an Order that the Supplement to the Consolidated Complaint, dated July 9, 2002 and previously filed with this Court, be deemed part of the Consolidated Complaint; such Supplement be prosecuted by the Preferred Purchaser Plaintiffs' attorneys, and that the respective defendants file any motions to dismiss upon a schedule set forth in the attached [proposed] order;

(b) if required, an expedited hearing on this motion for the relief sought herein; and

(c) all further relief to which they may be entitled.

Dated: August 20, 2002

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